

# Memorandum

March 21, 2019

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**TO:** Infrastructure Finance Authority Board  
**FROM:** Chris Cummings, Assistant Director  
**SUBJ:** Water/Wastewater Financing Program Rulemaking

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## Requested Action

Informational Only       For Board Input       For Board Action (see Recommended Motion)

## Introduction

During this agenda item, the IFA Board will consider the proposed Water/Wastewater Financing Program Chapter 123 Division 43 rulemaking.

## Background

The Water/Wastewater Financing Program (W/W) provides grant and loan funds for the design and construction of community drinking water, wastewater, and stormwater infrastructure. W/W also provides funding for technical assistance. The Oregon Administrative Rule (OAR) associated with W/W is Chapter 123 Division 43. The program is funded through the Water Fund that was established through Oregon Revised Statute (ORS) 285B.563. In addition to funding infrastructure and technical assistance projects, the Water Fund is also used to provide the state match to the federally funded Safe Drinking Water Revolving Loan Fund. In the past, the Water Fund has been capitalized through the sale of lottery revenue bonds as well as transfer of moneys allowed under the Special Public Works Fund. The Water Fund also receives annual loan repayments. 2019 repayments are estimated to total \$7 million.

The program is commonly utilized by small and rural communities. For a water or wastewater design and construction project, a community must have a median household income below the state average to qualify for grant or reduced interest rate. For technical assistance awards, communities must have a population of under 15,000 to be eligible.

In 2017 Business Oregon formed a stakeholder committee tasked with reviewing two programs, the Special Public Works Fund (SPWF) and W/W. The committee was charged with making strategic recommendations to the IFA Board and staff concerning program policies, practices, and fund management. The committee recommended seven concepts for further exploration by staff. One of those recommendations was to allow Water/Wastewater Financing for projects that are not compliance related. This recommendation is reflected in the proposed rules for both design/construction projects and technical assistance projects further described below.

## Discussion

### A. Program Investment Prioritization

By rule, water and wastewater projects of up to \$10 million can be funded through W/W. Due to limited fund availability and the existence of larger funding sources (e.g. EPA funded state revolving funds and USDA Rural Development), the Water/Wastewater Funding Program is best suited to fund smaller projects (\$1.5 million or less) or be used to meet a funding gap for larger projects. Like SPWF, W/W can utilize the Oregon Bond Bank. Use of the Oregon Bond Bank negates some of the grant and subsidized interest rates benefit, making the federal funding sources more attractive for the largest of water and wastewater projects. With applications accepted anytime, W/W can be an agile funding source that addresses the urgent needs of small, rural communities. Adoption of the proposed administrative rulemaking would result in the program being poised to more nimbly respond the challenges of Oregon's communities.

Funding limitations and the responsive nature of the program requires the adoption of prioritization criteria that can be used during those times when funding is not available to meet all community needs. For the Division 43 rulemaking, the following prioritization criterion are proposed:

- A preference for technical assistance projects located within rural economically distressed areas as defined by the Oregon Business Development Department.
- A preference for projects that support a municipality's efforts to achieve or maintain compliance with the Safe Drinking Water Act and the Clean Water Act.
- A preference for projects that achieve water project regionalization.
- A preference for partnerships and collaborative projects.

### B. Modified Approach to Funding Design/Construction Projects

Current Division 43 rules include a focus on the funding of design/construction project associated with "non-compliance." By rule, non-compliance means the community has received a notice of non-compliance from a regulatory agency. The SPWF committee recommended allowing financing for projects that are not compliance related. To withhold funding until a regulatory agency is forced to act is often not in the best interest of communities. Through Division 43 rulemaking, Business Oregon proposes to assist communities address water and wastewater issues prior to being subject to formalized regulatory proceedings. Business Oregon seeks to continue to work with regulatory agency partners to ensure that the community proposed solutions to maintain compliance are verified to adequately address any regulatory concerns.

Rural communities, who are often economically disadvantaged, do not always have funds on hand to address unexpected or urgent infrastructure needs. Proposed Division 43 rulemaking seeks to support the funding of community projects intended to address urgent needs such as ensuring safe drinking water, adequate community water supply, addressing time sensitive water quality concerns, or projects associated with community flooding. In situations where a community is faced with a hardship, Business Oregon can serve as an agile partner through W/W. While the program is limited in the size of projects that can be funded, W/W has the potential to provide funds to communities faster than any other state or federal funding program in Oregon. With the proposed rulemaking, W/W would also be poised to assist in

addressing future governor declared regional emergencies such as severe drought. In summary, the proposed Division 43 rulemaking would allow for:

- Continued support for non-compliance projects but also support for those projects that allow a community to maintain compliance with regulatory requirements.
- Support of projects that address an urgent need such as a drinking water health risk, water supply concern, water quality concerns, or projects to address community vulnerability to flooding.
- Establishment of a prioritization criteria to be used when funds are limited as described in the Program Investment Prioritization section above.

### **C. Modified Approach to Funding Technical Assistance Projects**

Both grants up to \$20,000 and loans up to \$60,000 can be awarded to communities for technical assistance projects. W/W can fund Oregon Health Authority (OHA) reviewed Water Master Plans as well as Oregon Department of Environmental Quality (DEQ) reviewed Wastewater Facility Plans with no regulatory agency documentation required. W/W technical assistance awards can also support feasibility studies but current rules require associated non-compliance documentation. Securing documentation that a community is in violation of regulatory agency requirements may not be possible when a community is attempting to proactively work with the regulatory agency to stay in compliance. Under proposed Division 43 rulemaking, in lieu of documented non-compliance, documentation from a regulatory agency that demonstrates the study is needed would be adequate to support a feasibility study funding request.

The \$20,000 W/W grants are commonly utilized by rural and small communities throughout Oregon to secure engineering services. Current rule allows up to up to \$600,000 of funds to be expended each biennium for technical assistance awards. Proposed Division 43 rulemaking seeks to modify the approach to allow \$600,000 in technical assistance grants be awarded each biennium. The timing in which communities disburse (i.e. expend) previously awarded grants is highly variable. By modifying the approach, the Business Oregon Regional Development Officers and the communities they support will have more surety of biennial fund availability. With Business Oregon's cash and commitment tracking system there is not a risk of awards in excess of what the fund can support. W/W has the potential to assist up to 30 small and rural communities with technical assistance grants for engineering support each biennium.

In statute, there is a focus placed on supporting the regionalization of water and wastewater infrastructure. Division 43 rulemaking seeks to support regionalization study efforts for both the consolidation of existing systems as well as instances when a community seeks to band together to establish a new district. The desire to form a district may be driven by efforts to address a water supply challenge or sanitation concern. In summary, modifications to the W/W technical assistance approach would accomplish:

- Continued support and preference for feasibility studies associated with non-compliance projects, but also support for those feasibility studies identified as needed by a regulatory agency.
- Establishment of a prioritization criteria to be used when funds are limited or pace of technical assistance grant awards is projected to exceed biennial allocation.

- Allow for the biennial technical assistance allocation (\$600,000) to be connected to grant awards instead of disbursements (i.e., expenditures).
- Support of studies to assess water and wastewater infrastructure regionalization.

#### **D. Clarity and Succinctness**

One goal of the Division 43 rulemaking was to provide for a clear and succinct rule set that is consistently organized and reflects agency practice. Examples of efforts to streamline and clarify the rules include:

- Providing examples of project development costs and reorganizing allowable costs into one list (OAR 123-043-0015).
- Reorganizing technical assistance rules to ensure loan and grant information is consistently presented for both water projects and technical assistance projects (OAR 123-043-0041 and OAR 123-043-0055).
- Modifying the feasibility documentation requirement to be consistent with agency approach (OAR 123-043-0075).
- Removing rules that are more appropriately addressed contractually (OAR 123-043-0085 and OAR 123-043-0105).
- Avoiding duplication by removing authorization found elsewhere in rule [OAR 123-043-0115(2)].

#### **E. Rulemaking Coordination Approach**

Prior to drafting proposed Division 43 rules, the following internal coordination took place:

- Business Oregon Program and Policy Coordinator met with Regional Development Team members to discuss the community experience of engaging with the W/W program and acquiring necessary regulatory agency documentation.
- Business Oregon met with DEQ staff in Portland to discuss the technical assistance approach. Meeting with OHA occurred by phone.
- Internally, a team was convened that included all Business Oregon project managers responsible for managing W/W awards as well as a Public Finance Officer. The proposed rules were discussed and there was a subsequent opportunity for review and comment.
- Comments were received from Business Oregon Contracts staff related to rule streamlining, consistent organization, and language specific to contractual provisions.

After the draft rules were developed, the following additional coordination took place with stakeholders:

- Proposed rules were sent to OHA and Oregon Water Resources Department for statutorily required coordination [ORS 285B.563(7)]. Additional feedback from DEQ was sought related to technical assistance awards. No adverse comments were received.
- Proposed rules were sent to the League of Oregon Cities, Special District Association of Oregon; Association of Oregon Counties, Oregon Association of Water Utilities, and the Central Oregon Intergovernmental Council for comment. No adverse comments were received.

If the recommended motion is supported, a notice of proposed rulemaking will be filed with the Oregon Secretary of State office. This will result in a 49-day public comment period on the proposed Division 43 rules.

## **Recommended Motion**

Move to approve filing of a Notice of Proposed Rulemaking on the proposed Water/Wastewater Financing Program rules, with the Oregon Secretary of State office, to provide an additional public comment opportunity to facilitate rule adoption.

## **Attachments**

1. Proposed Division 43 Rulemaking (tracked changes)
2. Proposed Division 43 Rulemaking (clean copy)
3. Oregon Revised Statute 285B.560 - 285B.599